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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,480	10/21/2003	John Keeler SR.	424532-002	5040

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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/691,480	KEELER, JOHN	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The Amendment filed September 18, 2006 have been entered. Claims 7 and 15 have been amended. Claims 1-17 are pending and examined in the current application.

Claim Rejections - 35 USC § 112

The previous rejections regarding the Specification and 112 rejections have been withdrawn in light of applicant's amendments.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doerter (US 5268189) in view of Sugisawa et al (US 4840805).

The references and rejection are incorporated herein and as cited in the office action mailed September 6, 2006.

Regarding the new limitation of air to crabmeat ratio of 20% in claims 7 and 15 from the previous limitation of "essentially 20%", the rejection is maintained from the previous office action, where Sugisawa teaches that adjusting the volume of air inside a package so that the air is 18% of the volume of food, results in an improvement of storage properties of packaged shellfish. Thus Sugisawa teaches shellfish to air ratio of 82:18 by volume and the applicant recites the ratio as 80:20 by volume. One of ordinary skill in the art would not expect that making the air volume 20% (as recited in claims 7 and 15)

as opposed to 18% (as taught by Sugisawa) would make a significant enhancement to the shelf life of the packaged product. Thus absent any clear and convincing evidence and/or arguments to the contrary, the teachings of Doerter in view of Sugisawa read upon the claimed invention. Furthermore, it is noted that applicant's original disclosure never recites exactly 20% and thus it is further believed that the reference reads upon the claimed invention.

(B) Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueyama et al. (US 2002/0061412) in view of Sugisawa et al (US 4840805). The references and rejection are incorporated herein and as cited in the office action mailed September 6, 2006.

Regarding the new limitation of air to crabmeat ratio of 20% in claims 7 and 15 from the previous limitation of "essentially 20%", the rejection is maintained from the previous office action, where Sugisawa teaches that adjusting the volume of air inside a package so that the air is 18% of the volume of food, results in an improvement of storage properties of packaged shellfish. Thus Sugisawa teaches shellfish to air ratio of 82:18 by volume and the applicant recites the ratio as 80:20 by volume. One of ordinary skill in the art would not expect that making the air volume 20% (as recited in claims 7 and 15) as opposed to 18% (as taught by Sugisawa) would make a significant enhancement to the shelf life of the packaged product. Thus absent any clear and convincing evidence and/or arguments to the contrary, the teachings of Ueyama in view of Sugisawa read

upon the claimed invention. Furthermore it is noted that applicant's original disclosure never recites exactly 20% and thus it is further believed that the reference reads upon the claimed invention.

Response to Arguments

Applicant's arguments filed September 18, 2006, have been fully considered but they are not persuasive.

I) Applicant argues that the method as taught by Doerter is not the same as the claimed method, however, the method as recited by applicant is a method "comprising the steps of...". It is also noted that Doerter and Sugisawa teach of the limitations claimed within the method. Thus, as "comprising" is not a closed-ended process, and the process can include other steps, therefore, Doerter in view of Sugisawa reads upon the invention as claimed.

II) Applicant's argument that Doerter does not teach the claimed invention is not persuasive because Doerter teaches the addition of a mixture of carrageenan and water to the container containing the shellfish (crabmeat) to effectively remove air from the package (Column 3, lines 6-10), thus Doerter does teach adjusting the volume of air within said packaging vessel as claimed in claim 1.

III) Applicant's argument that Sugisawa teaches sterilization but does not teach pasteurization as claimed is also not persuasive because Sugisawa was relied upon in an obviousness type rejection and the other reference relied upon is Doerter. Doerter

teaches that packaged shellfish can either be pasteurized or sterilized (Column 3, lines 17-25), therefore the combination does teach that it was known to package cooked shell fish or fish (crabmeat) in a flexible package that could be pasteurized to give the packaged food a longer shelf life. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

IV) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Doerter teaches that the pouch used for packaging shellfish could be made of a high density polyethylene resin (Column 2, lines 42-43), however the reference is silent as to the material of the pouch being a multilayered film. Regarding the nature of the packaging material Sugisawa, teaches bags (container), for packing cooked fish products, that are made from laminates of materials, such as nylon, polyethylene terapthalate (PET), polypropylene or cast polypropylene (CPP), aluminum foil etc., (Column 2, lines 61-68 and Column 3, line 65). Therefore, Sugisawa, teaches a multilayered (laminated) bag for packaging cooked

fish etc., comprising PET, nylon, CPP and aluminum as claimed by the applicant in claims 3, 4, 12, and 13.

Regarding the volume of the package, Doerter teaches removing air from the package by adding a mixture of carrageenan and water before sealing the package, which would create a partial vacuum in the package of shellfish (crabmeat), however the reference is silent as to the specific volume of air present in the package. Sugisawa teaches packaging the cooked fish product under vacuum (Column 3, lines 7-8), where the volume of air in the package is preferably kept at less than 15% of the total package volume, to improve the effect of sterilization and to prevent fish meat from breaking (Column 3, lines 7-16). Thus, Sugisawa teaches partial vacuum in the package where if the total volume of the package is 100, the air volume would be 15. Therefore, the preferable fish volume taught by Sugisawa would be 85 and the resulting ratio of air to fish is about 18% by volume, which would fall in the range recited by the applicant in claims 6-9 and 14-17.

It has been known in the art of packaging meat or fish products to reduce the amount of air from the package before sealing it for longer and safe shelf life of the food (Doerter) and it has also been also known that reducing the air volume in the package to about 15% or less (or air to meat ratio of about 18% or less by volume), enhances the effect of sterilization or preserves the cooked fish product better (Sugisawa, Column 3, lines 3-34). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify Doerter and include about 18% of air (by volume) to the packaged shellfish (crabmeat) product, to enhance the effect of the heat treatment

(pasteurization or sterilization) and also to prevent deterioration of crabmeat due to breaking. One of ordinary skill in the art would have been motivated to package with air to food ratio of about 18% to have a packaged fish or shellfish product with less bacteriological and physical damage during processing and storage, which is also the intent of the applicant.

V) In response to applicant's argument that Doerter and Sugisawa are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). [redacted] In this case, Doerter teaches the process for extending the shelf life of fresh or cooked shellfish in a flexible plastic container which can be hermetically sealed to give the food long shelf life and Sugisawa teaches of a container and a method of packing cooked fish, thus the references fall within the category of analogous art.

VI) Regarding applicant's argument that Ueyama does not teach the claimed invention, especially pasteurization, reference is made to the rejection in the previous office action dated September 6, 2006. The obviousness rejection based on Ueyama and Sugisawa states that Ueyama teaches filling the package and either heat treating (pasteurizing) or sterilizing the package to extend the shelf life (Page 3).

VII) Regarding the amended claims 7 and 13, the rejections on record show that it was known in the art that 18% volume of air is desirable for extending the shelf life of the packaged fish or shellfish product (animal flesh). Changing the air volume in a packaged animal flesh product from 18-20% would not have involved an inventive step, and do not provide patentable distinction to the claims. Thus, the claimed invention would have been obvious over Doerter and Sugisawa or Ueyama and Sugisawa, absent any clear and convincing evidence and/or arguments to the contrary. Furthermore, it is noted that applicant's original disclosure never recites exactly 20% and thus it is further believed that the reference reads upon the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla
Examiner
Art Unit 17617

KEITH HENDRICKS
PRIMARY EXAMINER